REMARKS

This Preliminary Amendment is filed in response to the FINAL Office Action mailed on January 28, 2004, and is filed in the Request for Continued Examination (RCE) filed on July 21, 2004.

Please enter and consider the Amendment under 37 C.F.R. 1.116 filed on May 27, 2004.

Claims 1, 3-5 and 7-25 are pending in the Application.

Claim 8 was amended to correct a typographical error.

Applicant repeats Applicant's earlier argument, filed in the Amendment after FINAL Rejection under 37 C.F.R. 1.116 on May 27, 2004, concerning rejections based on Hjalmtysson, et al., U. S. Patent No. 6,128,305 issued October 3, 2000 (hereinafter Hjalmtysson).

In summary, Applicant claims measuring characteristics of the connection, and in sharp contrast Hjalmtysson simply discloses committing to certain quality of service characteristics. Even though routers commit to quality of service characteristics in a connection, the connection may not work correctly. Applicant tests the connection after it is established, in order to learn if it is working correctly.

In particular, at Paragraphs 3-4 of the FINAL Office Action mailed on January 28, 2004, claims 1, 3, 5, 7-10, 12-15, 17-20, 22, 23 were rejected under 35 U.S.C. § 102(e) as being anticipated by Hjalmtysson et al. U.S. Patent No. 6,128,305 issued October 3, 2000 (hereinafter Hjalmtysson).

Applicant's claimed invention, as set out in representative claim 1, comprises in part:

> 1. Asynchronous connection-oriented transmission network (10) of the ATM network type comprising a plurality of switching nodes (12, 14, 16, 18) interconnected by connection lines, each of said switching nodes being associated with a control point being in charge of determining the best route between any source node (12) and any destination node (18) when a connection has to be established therebetween by identifying which of the connection lines are eligible based upon the requirement of a quality of service;
>
> said network being characterized in that each one of said plurality of switching nodes comprises:
>
> Control ATM Test Application (CATMTA) means (22) and Deamon ATM Test Application (DATMTA) means (32) so that, at any time, a user interfacing a source node can test the connectivity of a network connection from said source node to a destination node by initiating a connection procedure wherein a call setup message (Fig. 1) is sent by the CATMTA means of said source node to said destination node and the DATMTA means of said destination node send back an acknowledgement message (Fig. 2) to said source node; and
>
> ***said Control ATM Test Application (CATMTA) means (22) comprise means for sending a verification data stream (Fig. 3) to said destination node after receiving said acknowledgement message and said Deamon ATM Test Application (DATMTA) means (32) comprise means for sending back a response data stream after receiving said verification data stream, said verification and response data streams being used to check the characteristics of the connection previously established between said source node and said destination node.***

Hjalmtysson discloses, at Fig. 9, the transmission of a quality of service request, QoS REQUEST, by source node 901 to destination node 910, and in response to receiving the QoS REQUEST, destination node 910 sending a quality of service commit, QoS COMMIT, message to source node 901. These messages are described by Hjalmtysson, beginning at his Col. 16 line 65, as:

> "Fig. 9 illustrates an example of a call processing flow for dealing with a Q of S request originating from the calling party. In this example it is presumed that the application requires a Q of S guarantee sometime shortly after the first hop connection is established. Thus, the Q of S request is sent shortly following the marker. Alternatively, applications may go through an end to end exchange, which could include data flows on a best effort basis. , before deciding what if any, Q of S needs to be established along the VC. In such an alternative case, the Q of S request may be generated at an arbitrary time after the initial connection setup has been completed.
>
> Once transmitted, the Q of S request is processed at the switching stations 903 and 905, to determine whether the request can be satisfied. There are several alternatives, which we cover below, for how the network may exploit parallelism in processing the Q of S negotiations across switches. After receiving and processing the Q of S request, the Q of S destination 910 generates a Q of S commit, back to the Q of S source 901. Upon receipt of the Q of S commit, the Q of S request can send Q of S Data (in the forward direction). The requester subsequently transmits a Q of S Ack as an announcement to the destination. Upon receipt of the Q of S Ack, the destination may also begin to transmit data that is assured the Q of S." (Hjalmtysson, Col. 16 line 65 - Col. 17 line 23)

Applicant respectfully urges that Hjalmtysson, as is clear from the quoted paragraphs above, simply exchanges Q of S request, commit, and Ack messages. The source station then "trusts" that the network is working according to the Ack and COMMIT messages.

In sharp contrast, Applicant claims testing the network in order to determine of the network is providing the desired, and committed, quality of service, as set out in claim 1 as: ***said Control ATM Test Application (CATMTA) means (22) comprise means for sending a verification data stream (Fig. 3) to said destination node after receiving said acknowledgement message and said Deamon ATM Test Application (DATMTA) means (32) comprise means for sending back a response data stream after receiving said verification data stream, said verification and response data streams being used to check the characteristics of the connection previously established between said source node and said destination node***.

Applicant defines the concept of ***said verification and response data streams being used to check the characteristics of the connection*** in the present Specification, especially in the present Specification beginning at Page 7 line 25 through page 8 line 21.

In the Specification, it is clear that Applicant is not simply sending a COMMIT or Ack message, but that Applicant is physically testing the connection through the network.

Applicant respectfully urges that Hjalmtysson has no disclosure of actually testing a connection through a network, as is claimed by Applicant.

Accordingly, Applicant respectfully urges that Hjalmtysson is legally precluded from anticipating the presently claimed invention under 35 U.S.C. § 102 because of the absence from Hjalmtysson of Applicant's claimed novel ***said Control ATM Test Application (CATMTA) means (22) comprise means for sending a verification data stream (Fig. 3) to said destination node after receiving said acknowledgement message and said Deamon ATM Test Application (DATMTA) means (32) comprise means for sending back a response data stream after receiving said verification data stream, said verification and response data streams being used to check the characteristics of the connection previously established between said source node and said destination node***.

Applicant respectfully urges that Applicant's novel claim language "***said verification and response data streams being used to check the characteristics of the connection previously established between said source node and said destination node***" distinguishes over all disclosures of Hjalmtysson.

All independent claims are believed to be in condition for allowance.

All dependent claims are believed to be dependent from allowable independent claims, and therefore in condition for allowance.

Favorable action is respectfully solicited.

Please charge any additional fee occasioned by this paper to our Deposit Account No. 03-1237.

Respectfully submitted,

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